IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2455 OF 2004

IN

SUIT NO. 3380 OF 1996

CIFCO Finance Ltd. ..Plaintiff

versus

M/s. Shreenath Enterprises

& Ors. ..Defendants

Mr. Piyush Shah for the Plaintiff.

Ms. Yasmin i/b. Mr. S. Ramaiyya for the Defendant No.8.

CORAM : D. G. DESHPANDE,J.

DATE : 21ST SEPTEMBER, 2004.

P.C. :

. Heard.

. This notice of motion is taken out by the defendant No.8 for setting aside the exparte order dated 15.6.2004 which came to be passed because the defendant No. 8 did not file written statement.

. Advocate for the Defendant No. 8 pointed out that she had filed written statement before the

impugned order came to be passed. Record and proceedings of the case show that the written statement of the defendant No. 8 is filed on 18.6.2003 i.e. more than one year before the exparte order was passed. Advocate for the Plaintiff however states that defendant No.8 did not serve the written statement upon the plaintiff and that there is an order of the Prothonotary & Senior Master dated 3.12.2002 to proceed without written statement against defendant No.8. As against this advocate for the Defendant No.8 states that in the affidavit of service about service on defendant No.8 the plaintiff has stated that "not claimed" whereas the packet had the noting "person not found".

. In any case looking to the fact that the written statement was already filed on 18.6.2003 before the exparte order came to be passed and the amount claimed is Rs.26 lacs; the only thing that defendant No.8 did not do was to serve written statement upon the plaintiff. Therefore impugned order is set aside subject to cost of Rs.2,500/=. Costs to be paid within two weeks from today. Payment of cost condition precedent.

. Notice of Motion is disposed of.

. Certified copy expedited.

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